DOCUMENT RESUME

ED 392 227 EC 304 658

AUTHOR Hurth, Joicey L.; Goff, Paula E.
TITLE Assuring the Family's Role on the Early Intervention Team: Explaining Rights and Safeguards.
INSTITUTION National Early Childhood Technical Assistance System, Chapel Hill, NC.
SPONS AGENCY Special Education Programs (ED/OSERS), Washington, DC.
PUB DATE Feb 96
CONTRACT HS-91-01-1001
NOTE 35p.
AVAILABLE FROM NEC*TAS Coordinating Office, 500 NationsBank Plaza, 137 E. Franklin St., Chapel Hill, NC 27514; e-mail: nectasta@mhs.unc.edu; World Wide Web: http://www.nectas.unc.edu
PUB TYPE Guides - Non-Classroom Use (055)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Compliance (Legal); Conflict Resolution; Delivery Systems; *Disabilities; *Due Process; *Early Intervention; Educational Legislation; *Family Involvement; Family School Relationship; Federal Legislation; *Individualized Family Service Plans; Infants; Parent Grievances; *Parent Rights; Parent School Relationship; Preschool Education; Toddlers
IDENTIFIERS *Individuals with Disabilities Education Act Part H

ABSTRACT

This paper synthesizes innovative practices and ideas for explaining to families the procedural safeguards required by the Infants and Toddlers with Disabilities Program (Part H) of the Individuals with Disabilities Education Act (IDEA). An introductory discussion stresses that the primary safeguard provided for in Part H is the clear acknowledgment of the family's role as primary decision maker in developing an Individualized Family Service Plan (IFSP). A table lists the central rights and safeguards under Part H and keys them to the actual regulatory language. A step-by-step model focuses on explaining procedural safeguards in context and explaining procedures for conflict resolution. A flow chart identifies required and recommended practices at various stages from referral for early intervention to acceptance and implementation of the IFSP. Principles and practices for creating and using family-friendly materials are identified and discussed including: (1) use of family-friendly language and a family-centered philosophy; (2) presentation of information on procedural safeguards in the context of early intervention services and the IFSP process; (3) use of a variety of media and multiple languages; (4) provision of easy-to-use materials; and (5) involvement of a diverse cadre of informed service providers, experienced parents, and community representatives. Appended are the IDEA regulations relating to procedural safeguards. (Contains 17 references.) (DB)

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☒ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

ED 392 227

Assuring the Family's Role on the Early Intervention Team: Explaining Rights and Safeguards

by
Joicey L. Hurth and Paula E. Goff

BEST COPY AVAILABLE

NEC*TAS
National Early Childhood Technical Assistance System

EC304658

Assuring the Family's Role on the Early Intervention Team: Explaining Rights and Safeguards

by
Joicey L. Hurth and Paula E. Goff

NEC*TAS
National Early Childhood Technical Assistance System
Chapel Hill, North Carolina

The National Early Childhood Technical Assistance System (NEC*TAS)
is a collaborative system, coordinated by the
Frank Porter Graham Child Development Center
at the
University of North Carolina at Chapel Hill
with
Federation for Children with Special Needs
Georgetown University Child Development Center
Hawai'i University Affiliated Program, University of Hawai'i at Manoa
National Association of State Directors of Special Education (NASDSE)
ZERO TO THREE/National Center for Clinical Infant Programs (NCCIP)

For more information about NEC*TAS,
please contact the Coordinating Office at:
500 NationsBank Plaza
137 East Franklin Street
Chapel Hill, NC 27514
(919) 962-2001 (voice)
(919) 966-4041 (TDD)
Fax: (919) 966-7463
Internet: nectasta.nectas@mhs.unc.edu
World Wide Web: http://www.nectas.unc.edu

Additional copies of this publication are available at cost from the NEC*TAS Coordinating Office. A complete list of NEC*TAS resources is available from the Coordinating Office and at our World Wide Web address.

This resource is produced and distributed by the National Early Childhood Technical Assistance System (NEC*TAS), pursuant to contract number HS-91-01-1001 from the Office of Special Education Programs, U.S. Department of Education. Contractors undertaking projects under government sponsorship are encouraged to express their judgment in professional and technical matters. Any opinions expressed do not necessarily represent the Department of Education's position or policy.

February 1996

Principal Investigator: Pascal Trohanis
Contracting Officer's Technical Representative (OSEP): Peggy Cvach
Contracting Officer: Donna M. Hoblit
Authors: Joicey L. Hurth and Paula E. Goff
Managing Editor: Nancy Guadagno

Contents

Acknowledgments v

Introduction 1

Background and Issues 2

Understanding Procedural Safeguards: Implications for Families 3

Assuring That Families Are Fully Informed Team Members:
A Step-by-Step Model 5
- Explaining Procedural Safeguards in Context 5
- Explaining Procedures for Complaint Resolution 7

Principles and Practices From States and Projects for
Creating and Using Family-Friendly Materials 9
- Use family-friendly language and a clearly stated philosophy of family-centered services 9
- Present procedural safeguards in the context of information about early intervention services and the IFSP process 10
- Use a variety of media produced in multiple languages to accommodate individual needs and preferences for receiving and understanding information 11
- Assure accessibility of information by enhancing materials' appeal, availability in multiple community locations, readability, and inclusion of interpretive supports 12
- Involve a diverse cadre of informed service providers, experienced parents, and community representatives in explaining early intervention services and procedural safeguards to families 13

Future Challenges 14

Next Steps: A Call for Resources 15

References 16

Appendix: Regulations for Procedural Safeguards Under
IDEA — Part H and Section 619 of Part B 17

Table 1: Understanding Procedural Safeguards: Examples of
Explanations and Implications for Families 4

Figure 1: Explaining Part H Procedural Safeguards to
Families: A Step-by-Step Model 6

Acknowledgments

The authors thank the following review team members for the extensive comments and thoughtful insights they provided during the development of this paper:

- Betsy Ayankoya, Technical Assistance Coordinator, NEC•TAS, Chapel Hill, North Carolina;
- Linda Bluth, Governor's Office for Children, Youth, and Families, Baltimore, Maryland;
- Kim Brame, Parent of a child with special needs; and Technical Assistance Coordinator, NEC•TAS, Chapel Hill, North Carolina;
- Rosalie Edes, Parent of a child with special needs; and, ICC Task Force on Procedural Safeguards, ICC Staff Member, Department of Public Health, Boston, Massachusetts;
- Evelyn Hausslein, Parent of a child with special needs; Coordinator, NEC•TAS at the Federation for Children with Special Needs, Boston, Massachusetts;
- Roxane Kaufmann, Cooordinator, NEC•TAS at Georgetown University Child Development Center, Washington, D.C.;
- Linda Kjerland, Director, Project Dakota, Eagan, Minnesota;
- Leticia Patiño, (formerly) Early Intervention Program Attorney, Bazelon Center for Mental Health Law, Washington, D.C.; and,
- Amy Whitehead, Parent of a child with special needs; and Trainer, Service Coordination Project, Waisman Center, Madison, Wisconsin.

Introduction

The procedural safeguards required by The Infants and Toddlers with Disabilities Program (Part H) of the Individuals with Disabilities Education Act (IDEA) are intended to protect the interests of families with infants and toddlers with special needs and of the early intervention system. Procedural safeguards are the checks and balances of the system, not a piece separate from the system. For families, rights and safeguards help ensure that an Individualized Family Service Plan (IFSP) is developed that addresses their priorities and concerns. For the early intervention system, rights and safeguards assure quality and equity. For families and for the system, procedural safeguards provide the protection of an impartial system for complaint resolution. Early intervention system personnel are legally obligated to explain procedural safeguards to families and to support an active adherence to and understanding of these safeguards throughout the early intervention system.

In order for families to be fully informed of their rights and safeguards, they also must understand the early intervention system and their role as partners and decision makers in the early intervention process. They should be advised that the intent of Part H of IDEA is to enhance families' abilities to meet the special needs of their infants and toddlers by strengthening their authority and encouraging their participation in meeting those needs.

This paper is a synthesis of innovative practices and ideas for explaining procedural safeguards to families which assure that families are fully informed in ways that support their role in the early intervention process. The authors solicited information about practices and ideas for explaining procedural safeguards to families from projects funded by the Early Education Program for Children with Disabilities (EEPCD) of the U. S. Department of Education, and from the state lead agencies for Part H. This synthesis includes a step-by-step model of explaining procedural safeguards that parallels the early intervention process. The authors intend to explore the implications of procedural safeguards for families, but not to analyze the Part H safeguards themselves. The paper has been developed for state Part H leaders, service providers, families, family advocates, and especially for those people who are involved in explaining procedural safeguards to families.

It is important to note that respondents frequently indicated that their ideas and practices were in the pilot stage of development. Therefore, this paper reflects an analysis of a variety of materials and descriptions of promising practices. The paper also reflects a synthesis of ideas from a review team composed of parent leaders; of EEPCD project directors; and of experts in educational rights, procedural safeguards, and cultural diversity (see the list of review team members in the Acknowledgments).

Background and Issues

The primary safeguard provided for in Part H is the clear acknowledgment of the family's role as a primary decision maker in developing an IFSP. Early intervention, as supported through federal Part H funds, is a voluntary program. Part H regulations strengthen and clarify a family's right to accept or reject any service without jeopardizing other services that they want (see 34 CFR §303.405). The family-centered spirit of early intervention affords an opportunity to develop new strategies for supporting families in informed partnerships with the system and to change practice that too often has been perfunctory, adversarial, or culturally insensitive.

For example, a common method of informing parents of the safeguards guaranteed them is to provide them with written materials about these safeguards during intake or entry into an early intervention program. At that time, providers may review the materials with families who then are asked to sign all of the informed consent forms and releases. Often, these documents are nothing more than direct citations of the law. Sometimes, the safeguards are listed in a "you have the right to" format, reminiscent of being "mirandized" or being read your rights. Procedures such as these assume that all families can read English, can interpret legal rights, and feel free to assert themselves and ask questions.

Such procedures are likely to produce unfortunate consequences. Many families and service providers come to view procedural safeguards as administrative paperwork that only becomes important when a problem arises. This attitude is a disservice to families and providers because it belittles a hard-won legacy of respect for and protection of families' rights and safeguards that strengthen service systems. Worse, families can be overwhelmed by the legal jargon, by the adversarial connotations, and by a lack of understanding of why these rights are necessary. When families are asked to sign a stack of consent forms, the legal aspects of the relationship with providers are emphasized. Meeting legal requirements can be an opportunity for service providers to begin teaching families about safeguards while conveying their respect for the role of families in the early intervention system. Unfortunately, this opportunity frequently is missed, often because service coordinators and/or service providers are not fully trained in procedural safeguards, have a limited understanding of them, and find them difficult to explain when questioned.

Although the method of overwhelming families with paperwork during their first contact with the system may comply with the letter of the law, it does not assure that families are fully informed. Families are not fully informed until they understand the early intervention system and their role in the system. Rights and safeguards are an intregal part of this basic information.

Understanding Procedural Safeguards: Implications for Families

A simple listing of rights and safeguards does not adequately convey the meaning of these protections. Each right and safeguard has implications for a family's experience with the early intervention system. Further, because Part H is family-oriented legislation, the rights and safeguards convey the law's central principles of respect for families' privacy, diversity, and role as informed members of the early intervention team.

Table 1, "Understanding Procedural Safeguards: Examples of Explanations and Implications for Families" on page 4, lists some of the central rights and safeguards under Part H that must be addressed during the process of planning and providing services. The bold headings in Table 1 are the section headings from the Part H regulations (U.S. Department of Education, 1993), followed by the section citation in parentheses. The text below each heading is not the actual regulatory language but rather is an example of how a service provider could explain to families the safeguard and its implications. The full regulatory text pertaining to procedural safeguards under Part H of IDEA (34 CFR §§303.400-.460) is reproduced in the Appendix.

Table 1

Understanding Procedural Safeguards: Examples of Explanations and Implications for Families

Rights and safeguards under 34 CFR §§303.400-.460, Regulations for the Early Intervention Program for Infants and Toddlers With Disabilities, Part H of IDEA (U.S. Department of Education, 1993)

Written prior notice (§.403)

The early intervention program must give you advance written information about any evaluations, services, or other actions affecting your child. Parents know their children best. The information you share with us will make sure that the evaluations and services are right for you. The "paper work" assures that you get all the details *before* any activity.

Use of parent's native language or preferred mode of communication (§§.401 and .403)

It is your right to thoroughly understand all activities and written records about your child. If you prefer another language or way of communicating (explain relevant option, such as braille, sign language, etc.), we will get an interpreter (use your mode of communicating), if at all possible. The early intervention program wants you to understand so that you can be an informed team member and decision maker.

Written consent (§.404)

The early intervention program needs your permission to take any actions that affect your child. You will be asked to give your consent in writing before we evaluate or provide services. Be sure you completely understand the suggested activities. By being involved, you can help the early intervention program plan services that match your family's preferences and needs. The early intervention program needs to explain what happens if you give your consent and if you do not give your consent.

Confidentiality and release of information (§.401-.404)

The early intervention program values the information you and other service and health care providers have learned about your child. We will ask others for this information, but we need your written permission to do so. Just as the early intervention program needs your permission to get your child's records from other providers, the records that the early intervention program will develop will not be shared with anyone unless you give your permission.

Examine records (§.402)

The early intervention record is your family's record. You can see anything in the early intervention program's records about your child and family. If you do not understand the way records are written, the information in the child's record will be explained to you in a way you understand. You are a team member and we want you to have the same information as other team members.

Accept or decline services without jeopardy (§.405)

With the other members of your child's early intervention team, you will consider which services can best help you accomplish the outcomes that you want for your child and family. You will be asked to give your consent for those services that you want. You do not have to agree to all services recommended. You can say no to some services and still get the services that you do want. If you decide to try other services at a later date, you can give your consent then.

Procedures for resolving complaints (§.420)

If you and the early intervention team do not agree on plans or services, or if you have other complaints about your experience with the program, there are procedures for resolving your concerns quickly. There are many informal ways of sharing your concerns with your team and the early intervention program. Your feedback will help the early intervention program improve. However, if informal steps do not work to satisfy your concern, there are other more formal steps to assure that a knowledgeable and impartial person, from outside the program, hears your complaint and helps you resolve it. The early intervention program recognizes your right to make decisions about your child and will take your concerns seriously. If you have questions, call _____.

Bold type: Section headings from regulations.

Narrative: Sample of language that might be used by an early intervention system to explain implications of regulations to families.

Assuring That Families Are Fully Informed Team Members: A Step-by-Step Model

Explaining Procedural Safeguards in Context

Assuring that families are fully informed of their rights and safeguards requires ongoing explanations in the context of the early intervention process. It would be impossible to fully understand and appreciate the *safeguards*, before having had any experience with the *procedures*. Figure 1, "Explaining Part H Procedural Safeguards to Families: A Step-by-Step Model" on page 6, outlines the information that families need to understand at each step in the process, from referral through IFSP development and service implementation. Each box in Figure 1 represents a major step in the development of an IFSP. Citation numbers in parentheses at the end of each sentence refer to the relevant sections of Part H regulations. Safeguards are intentionally repeated at different steps (boxes), because of the numerous times within the process that a safeguard may apply. Italicized text indicates a recommended practice, not one which is required by legislation. Figure 1 is a generic model and should be adapted to illustrate specific procedures used by an early intervention program or agency.

The model suggests that families need information to support their role as team members throughout the IFSP process. At each step of the IFSP process, important decisions must be made. Only to the extent that families understand their options, can they fully exercise their decision-making authority as part of the early intervention team.

During early contacts, families should be invited to participate as key members of the early intervention team and should be oriented to the early intervention system and services. This orientation should include an introduction to rights and safeguards. The introduction can be supplemented with a variety of easily accessible materials about the early intervention system as well as about rights and safeguards, to which families can refer over time (see the section "Principles and Practices from States and Projects for Creating and Using Family-Friendly Materials" below). The Step-by-Step Model does not suggest that all rights and safeguards be presented in detail at first contact, unless a family requests such information. Rather, an explanation of each right and safeguard is explained in the context of each procedure to which it relates.

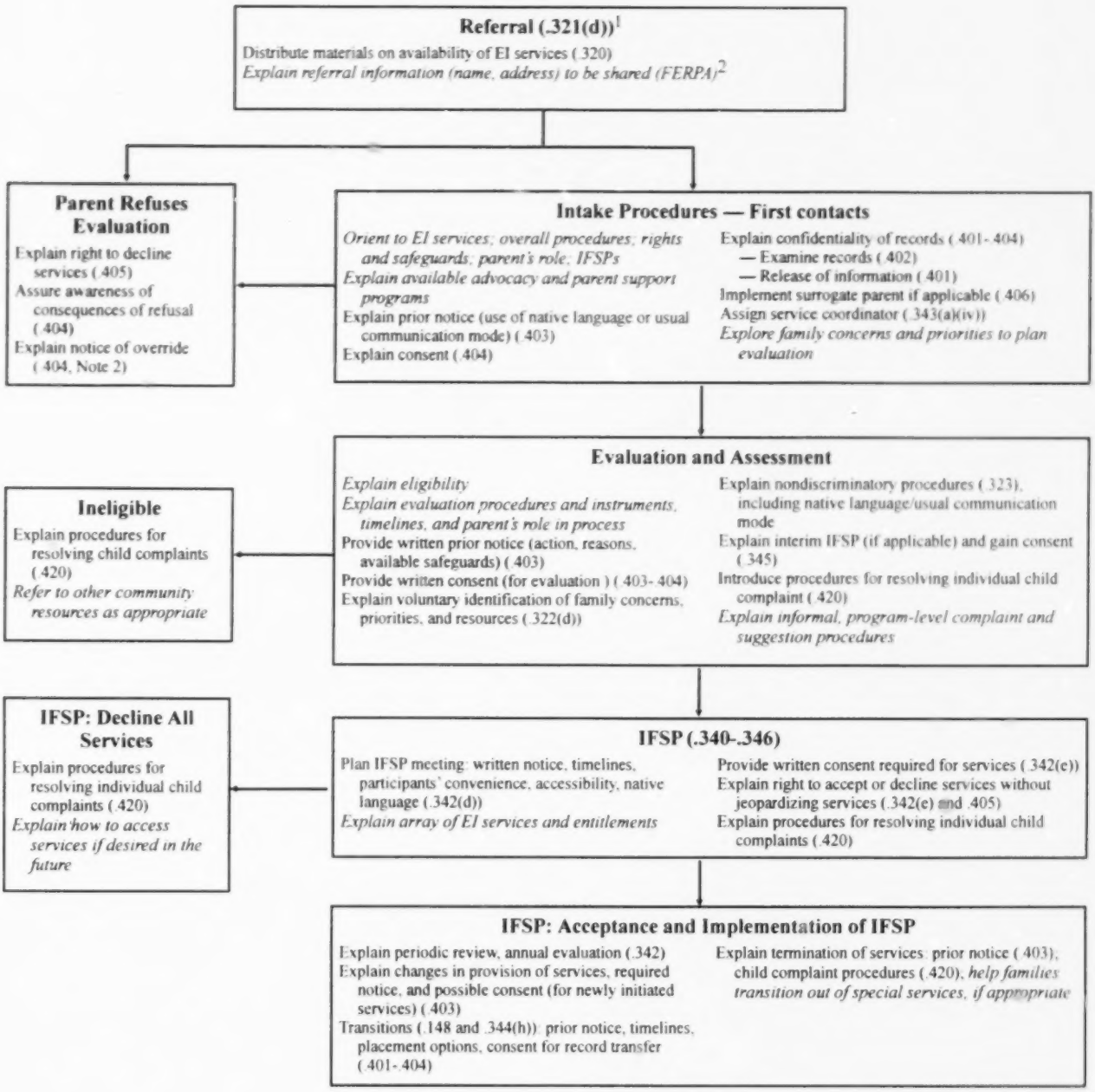
Explaining the safeguards and their implications clarifies how the early intervention system operates and exemplifies the family's role in the system. Each step of planning with a child's family provides an opportunity to discuss the relevant rights and safeguards and their meanings or implications. For example, before evaluation it is important to explain *prior written notice*. It is also important to operationalize the meaning of this safeguard by statements such as:

> You will receive a letter explaining the evaluation procedures we discussed and why we are doing them. It will also remind you of the time and location on which we agreed. This letter is an example of *prior written notice*, a legal requirement, which assures that the

Figure 1

Explaining Part H Procedural Safeguards to Families: A Step-by-Step Model

Text in italics indicates practices that are recommended but are not required by legislation.


Referral (.321(d))[1]
Distribute materials on availability of EI services (.320)
Explain referral information (name, address) to be shared (FERPA)[2]
Parent Refuses Evaluation
Explain right to decline services (.405)
Assure awareness of consequences of refusal (.404)
Explain notice of override (.404, Note 2)
Intake Procedures — First contacts
Orient to EI services; overall procedures; rights and safeguards; parent's role; IFSPs
Explain available advocacy and parent support programs
Explain prior notice (use of native language or usual communication mode) (.403)
Explain consent (.404)
Explain confidentiality of records (.401-.404)
— Examine records (.402)
— Release of information (.401)
Implement surrogate parent if applicable (.406)
Assign service coordinator (.343(a)(iv))
Explore family concerns and priorities to plan evaluation
Ineligible
Explain procedures for resolving child complaints (.420)
Refer to other community resources as appropriate
Evaluation and Assessment
Explain eligibility
Explain evaluation procedures and instruments, timelines, and parent's role in process
Provide written prior notice (action, reasons, available safeguards) (.403)
Provide written consent (for evaluation) (.403-.404)
Explain voluntary identification of family concerns, priorities, and resources (.322(d))
Explain nondiscriminatory procedures (.323), including native language/usual communication mode
Explain interim IFSP (if applicable) and gain consent (.345)
Introduce procedures for resolving individual child complaint (.420)
Explain informal, program-level complaint and suggestion procedures
IFSP: Decline All Services
Explain procedures for resolving individual child complaints (.420)
Explain how to access services if desired in the future
IFSP (.340-.346)
Plan IFSP meeting: written notice, timelines, participants' convenience, accessibility, native language (.342(d))
Explain array of EI services and entitlements
Provide written consent required for services (.342(e))
Explain right to accept or decline services without jeopardizing services (.342(e) and .405)
Explain procedures for resolving individual child complaints (.420)
IFSP: Acceptance and Implementation of IFSP
Explain periodic review, annual evaluation (.342)
Explain changes in provision of services, required notice, and possible consent (for newly initiated services) (.403)
Transitions (.148 and .344(h)): prior notice, timelines, placement options, consent for record transfer (.401-.404)
Explain termination of services: prior notice (.403), child complaint procedures (.420), help families transition out of special services, if appropriate

[1] Numbers in parentheses reference 34 CFR Part 303, Regulations for the Early Intervention Program for Infants and Toddlers With Disabilities (Part H) under the Individuals With Disabilities Education Act (IDEA) (U.S. Department of Education, 1993)

[2] Family Educational Rights and Privacy Act (FERPA) of 1974, as amended, enacted as Sec. 438 of the General Education Provisions Act (codified as amended at 20 U.S.C. 1232g; regulations at 34 CFR, Part 99).

early intervention program explains to parents what it plans to do. You will receive other written notices like this, before we provide or change any services for your child.

As suggested by the Step-by-Step Model, other safeguards that should be explained before evaluation include *consent*, *native language or preferred mode of communication*, and *confidentiality of records*. The implications of these procedural safeguards in the context of evaluation include the family's right and need to fully understand suggested evaluation procedures so that their consent is truly informed. Further, these safeguards acknowledge that families are from diverse backgrounds and that the early intervention program will accommodate their communication preferences. One implication of the confidentiality safeguard is that, with the family's permission, the program will coordinate records with other providers on its behalf. In addition, families are reassured that information they share will be treated confidentially, unless *they* choose to release it.

The above examples illustrate rights and safeguards that should be explained in early contacts with families, prior to evaluation and assessment. These same safeguards and how they apply to other procedures should be reiterated at subsequent steps of the IFSP process as suggested by Figure 1. Such explanations of procedures contain powerful messages about early intervention's operative principles such as respect for families' privacy and diversity and value as informed partners on the early intervention team.

Explanations of rights and safeguards should be a part of the service provider's ongoing conversations with families. Rights and safeguards are an integral part of the basic information about how the system works. Reiterating rights and safeguards and their implications for families at each relevant step is a way to support a family's evolving understanding. As equal team members, families need the same information as the other team members. When all team members are informed and follow basic procedural safeguards, the process goes more smoothly, the team can make more appropriate plans and decisions, and the team can work smarter, not harder.

Explaining Procedures for Complaint Resolution

Although many rights and safeguards can be explained *when* they occur in the early intervention process, some need to be explained from the beginning *in case* a family may need them. Procedures for resolving individual child complaints are the most important example. Within the parameters of any relationship, disagreements arise; relationships between family members and service providers are no different. Disagreements are part of the process of interaction and provide opportunities for exploring options and solutions. When family members and service providers disagree about IFSP issues, an opportunity arises for an open discussion of desired outcomes and methods to achieve those outcomes. There is no single correct method of early intervention. What is available is a wide variety of options, ideas, and solutions that can be tailored to fit the needs and values of each individual child and family.

Evidence shows that states are adopting policy options for their Part H system that are supportive of families and that consistent with the family-service provider partnership that is the *spirit* of Part H (NEC*TAS, 1992). Under Part H regulations, states must choose either to develop new procedures for resolving child complaints meeting the requirements of the Part H regulations (34 CFR §§303.420 - 303.460), or to adopt their existing Part B child complaint process (34 CFR §§300.506 - 300.512, and §303.425).

For families, an important difference between these regulations is that Part H calls for a shorter time period for resolving a complaint — 30 days as opposed to 45 days under Part B. Most states are developing Part H procedures. Some states, particularly those in which the education department is the Part H lead agency, have adopted the Part B child complaint process. Recognizing that infants' needs change rapidly, several of these states encourage service providers to use the 30-day limit, instead of the 45-day limit under Part B, for complaint resolution. A 30-day complaint resolution also is being encouraged in the training of hearing officers.

Most states also are choosing to develop a mediation process as an intervening step in their system for resolving complaints. Many see mediation as an opportunity for parents, service providers, and an impartial mediator to discuss a variety of options for resolution of concerns, and to avoid more formal procedures that tend to be adversarial and costly for families and for early intervention systems. Mediation may be offered to families, but not required, and may not prolong the time limit for resolution.

In order to develop truly family-centered practices, early intervention programs, the community-based system, and the state lead agency need to establish multiple avenues to encourage family evaluation and feedback about their experiences in early intervention. Adapting overall program practice to meet families' expressed needs and preferences can create a service culture that is responsive to families and may prevent formal complaints. Different families will have different levels of comfort with and different preferred means of voicing concerns and offering evaluations. Establishing a variety of opportunities for input could include such strategies as:

- open-door policies that invite parents to talk to administrators;
- ongoing program evaluations, using multiple methods of information gathering (e.g., written evaluations, interviews, focus groups, exit interviews, IFSP analyses, reviews of progress towards outcomes);
- a policy that acknowledges the importance of a good match between a service provider and each family and that allows for parent choice in assignments;
- a suggestion box or other avenues for submitting comments anonymously;
- parent-to-parent support and/or parent group opportunities;
- parent advisory board members;
- ongoing availability of interpreter or translator services;
- a designated contact person in the state-level Part H system for parents to call when they are concerned about services or procedures; and,
- mediation services.

Principles and Practices From States and Projects for Creating and Using Family-Friendly Materials

As a part of a family-centered process of explaining rights and safeguards, service providers must recognize that each family — indeed, each family member — has a different approach to accessing and using information. To accommodate these unique approaches, providers must individualize the timing and methods of sharing information to match each family member's interests, needs, and preferences. The use of multiple methods of sharing information and the use of a variety of family-friendly materials are key approaches to respecting each family member's preferred learning mode. Because families have different levels of experience and comfort with formal early intervention service systems, a diverse group of experienced parents and community representatives should be informed about and available to explain services and safeguards.

A review of materials and information submitted by states and projects to NEC*TAS yielded the following principles and examples of creating and using family-friendly materials.

- ***Use family-friendly language and a clearly stated philosophy of family-centered services.***

When procedural safeguards are fully endorsed as a vital component of the early intervention system, the philosophy of family-centered services is clearly stated throughout the variety of materials used to explain family rights and safeguards.

The language that is used should be free of professional jargon and "legalese" (direct citations from the law without explanation). The reading level of the materials should be similar to that of popular newspapers and magazines (about the fourth- to fifth-grade level). However, care must be taken to assure that while the reading level is simple, the content is not. *Simple sentences* (as opposed to compound, complex sentences), *short, common words* (e.g., "use" instead of "utilize"), and *active verb tenses* (e.g., "take" rather than "could be taken") convey important information without talking down to families.

The language of materials can also carry messages about who is invited to use the information and, perhaps unintentionally, who is excluded. Today's families are not always comprised of mothers and fathers or parents and their children. Materials portraying this concept of family may exclude foster parents, grandparents, unmarried mates, or other people significant to a child's life. Except in instances when the legal requirements specifically limit a right or safeguard to parents or legal guardians, the language of materials should use inclusive terms like "family," "friends," "people who are important to you and your child," and "caretakers."

The following excerpts from print materials exemplify the language and philosophy of family-friendly materials:

> Parents are decision makers on the team. . . . You have many rights as the parent of a child receiving early intervention services. These rights are called *procedural safeguards*. All early intervention service providers must have written procedural safeguards. Because your rights are so important, your service coordinator must review them with you before the program of services begins and at least once a year thereafter. Please be sure you are given written information about your rights (Garland, 1992, p. 31).

> When I need early intervention services, the Department of Health has 45 days to complete my evaluation unless I get sick or my family needs more time. . . . We can have other members of our family, a friend, an advocate (supporter), or even an attorney present during the IFSP meeting if we'd like. . . . Should we disagree with any of the recommendations being made or think we are not receiving the services we need, we have a right to voice our concerns (Hawaii Department of Health, n.d., pp. 2-5).

- ***Present procedural safeguards in the context of information about early intervention services and the IFSP process.***

The same rationale for explaining rights and safeguards in the context of the early intervention process applies to the content of print, video, and other materials. Information on rights and safeguards should be presented with information on the early intervention system and services, the IFSP process, and the family's role on the early intervention team. The following examples illustrate different approaches to embedding rights and safeguards in information about the Part H program.

Lengthy and complex information can be broken apart conceptually and presented in brief, attractive pamphlets which can be discussed with families at the appropriate step of the early intervention process. Project Vision at the University of Idaho has created *Parents as Partners in Early Education* (Project Vision, 1992b), a series of 16 booklets, each explaining an aspect of early intervention services under Part H or preschool services under Section 619 of Part B. Titles in the series provide overviews to such topics as protecting family rights or procedural safeguards, IFSPs/IEPs, early intervention or preschool services, IDEA, service coordination, child assessment, gathering family information, and transition issues. Each booklet is quickly identified as one of a series by the consistent use of title, format, and graphics. The language is family friendly and the text is concise and readable while conveying the necessary information.

Project Vision (1992a) also produced the *Parent Satisfaction Ratings* series in a similar brief format which asks families to evaluate key aspects of information received and their experience relevant to the steps of the process outlined in the *Parents as Partners* series. For example, *Helping Families Learn About Family Rights* seeks family members' thoughts and feelings about questions such as "I believe the people helping my child really tried hard to explain my rights to me"; "I know that I can read my child's file whenever I want"; and "I know that if I do not like the services my child is getting I can request a meeting to talk about my needs" (p. 3).

Another approach is to produce a family manual or handbook that provides an overview to the early intervention program, including rights and safeguards, and refers to other materials that

address various topics in more detail. The manual is useful for orientation and the supplemental pieces can be used throughout the process as families need and want more detail. For example, the Maryland Infants and Toddlers Program developed *Dreams & Challenges: A Family's Guide to the Maryland Infants & Toddlers Program* (1992a), and three brochures: *Parents' Rights in the Early Intervention System* (1992c); *Mediation in the Early Intervention System* (1992c); and *Impartial Procedures for Resolving Individual Child Complaints* (1992b).

- ***Use a variety of media produced in multiple languages to accommodate individual needs and preferences for receiving and understanding information.***

Although Part H requires that families receive *written* information on their rights and safeguards, investment in multiple media presentations of information greatly expands options on how, when, where, and who receives information on rights and services. They also accommodate different learning styles and preferences. Print materials, even with multiple translations, are not accessible by everyone. Some cultures have an oral tradition for sharing information. Many people have difficulty reading or learn better and more quickly through listening. And most people better understand information when it is presented in more than one way.

When face-to-face contact may not be convenient or appropriate, audiotapes and audio-video cassettes can be loaned to parents, extended family members, and concerned others. They can be played in homes and in pediatricians' offices; placed in libraries; and used in training, public awareness, and child find activities. Alaska's Part H program discovered that almost all the remote frontier villages had at least one video cassette player and that community viewing of informational tapes was a popular winter pastime. The Alaska program is developing videos in a number of native dialects and languages that can be maintained within each rural village.

The Colorado Department of Education has produced videos on procedural safeguards, the IFSP, and service coordination. *Staying in Charge: Information for Families and Service Providers About Family Rights* (M. Herlinger, 1993) presents comprehensive information about procedural safeguards in the context of family stories about their children and their involvement with the early intervention process. The presentation is family friendly and safeguards are explained through the families' experiences.

When developing and translating materials, it is important to assure accurate and understandable translations. Materials should be reviewed by several members of the community for which the materials are intended. Special care should be taken with legal concepts that may not have direct translations into another language. English words may need to be used and fully defined and explained. Also, print and video materials should include visual depictions of people of diverse cultures and people with challenges.

- ***Assure accessibility of information by enhancing materials' appeal, availability in multiple community locations, readability, and inclusion of interpretive supports.***

Appeal and attractiveness enhances the use of the materials by families and service providers. Pictures and graphics break up blocks of text. Several parent handbooks (see for example, Fortune, Dietrich, Blough, & Hartman, 1993; Maryland Infants and Toddlers Program, 1992a; Texas Early Childhood Intervention Program, 1991) have graphics such as headings, boxes, and pictures, placed between small amounts of text. This breaks up the narrative and allows readers to view small pieces of information at a time. Some parent handbooks are written in an easy-to-read, question-and-answer format with very little professional jargon or legalese. The questions also are typical of those that parents ask and the answers provide simple yet thorough explanations of the issues For example, "What information will I be asked to share about my family? You can share whatever family information you choose. It's up to you. Providers will give you a chance to discuss family needs. They should only ask for information about your family which is important to the evaluation of your child" (Gilmer, 1992, p. 9).

One handbook submitted to NEC•TAS included tips for families interspersed throughout the handbook. Parents assisted in writing the tips which gave a first-hand perspective. Some handbooks include glossaries of terms and acronyms to help readers understand the early intervention system's language. *Early On*, the parents' handbook produced by Michigan's Part H system, advises families: "If anyone uses any initials you do not understand ask what they mean" (Fortune et al., 1993, p. 26).

Another approach is to develop a handbook that is designed to be a personal record of the child and family as well as a recordkeeping tool for the early intervention system. The book may be used more frequently by the family and service providers if the book is introduced to the family at the beginning of their relationship with the system, and if the format encourages the family to personalize the handbook with pictures and anecdotes and contains space for copies of early intervention records, medical records, IFSPs, and other notes. When the book is used more, more opportunities occur to read information about the system of early intervention services.

Any format used to provide information to parents needs to use language that supports partnership. For example, language such as "with your direction and agreement" and "you know your child like no one else . . . you are part of a team" indicates the expectation that families and service providers work together. Terms like "due process" connote an adversarial relationship whereas describing the "procedures to resolve a complaint" connotes negotiation and communication. Some pamphlets have been developed with wording such as "impartial ways to resolve concerns" or "ways we can problem solve."

A few materials described mediation in a manner that recognizes that disagreements occur and are part of the process. "Sometimes families of infants and toddlers with special needs disagree with their service providers. Most often these situations are worked out but when that honest effort falls short, families and service providers can find agreement through mediation. With the help of

a neutral third party, cooperation, agreement and solutions can become reality" (Hawai'i Department of Health, 1991, p. 1).

When information is provided by many methods and in many formats, the information is accessible to more families. The law requires that families receive information in the families' preferred mode of communication. Therefore, early intervention systems need to develop materials and procedures that are available in a variety of languages and formats. Audio and video products make information available to nonreaders and others who prefer these formats.

- ***Involve a diverse cadre of informed service providers, experienced parents, and community representatives in explaining early intervention services and procedural safeguards to families.***

Another method being explored is to train key community leaders in the early intervention system so that they can be a resource for families. In keeping with the Part H requirement to reach traditionally underserved families, informing and involving leaders of their communities can be an effective strategy. The use of community people as interpreters to provide information to families about the system and procedural safeguards also is being piloted by some states and projects. This appears especially helpful for families with an oral tradition of communicating. Some states are supporting local programs to recruit and train a cadre of people from diverse communities and languages to serve as service coordinators on a consulting or fee-for-service basis.

Experienced family members, who are well informed about the early intervention system, are being connected with families who are new to the system. Parents are being hired and trained as service coordinators, trainers, guides, and interpreters through the IFSP process. Some states have funded parent programs to provide these services (for example, Community Resource Parents in Vermont; Project LINC in Colorado; Parents as Partners in Early Intervention in Florida; and New Visions in Maryland). In other programs, parents and other community people volunteer to provide support and answer questions for the new family as they go through each step of the process.

Several states involve family members as hearing officers and mediators. Other states include family members in the process of training hearing officers and/or mediators.

Access to information also is improved by the use of several outlets for dissemination. Although state and local agency offices frequently are used as dissemination points, other outlets can include local physician offices, grocery stores, public libraries, churches, public health clinics, laundromats, and community programs. Many video rental stores stock public service tapes that are loaned free of charge. Public service announcements can be played on radio and television, and included in community newspapers.

Future Challenges

Part H provides the opportunity to enhance relationships between families and service providers. Early intervention can prepare families for a lifetime of productive interaction with service systems. For this reason, investing the time and resources to thoroughly explain rights and procedural safeguards is an important service for all involved. Assuring families a role as partners and decision makers in the early intervention system is an evolutionary process. As states and communities fully implement Part H, much technical support and training will be necessary to facilitate program level change to truly family-centered practice.

The Part H system is enhanced when there is a person or persons with expertise in procedural safeguards, who is available for consultation with families and service providers. It is probably not feasible for every local service program to have someone on staff with specialized knowledge about all pertinent state and federal legislation and judicial decisions. Some states have designated a staff person whose responsibilities include being available to discuss questions and concerns from families and service providers. In one state's experience, this designated staff person has been able to resolve all concerns to date. In fact, all concerns were a result of inadequate understanding of the rights, safeguards, and policies of the system (L. Bluth, personal communication, 1994).

The interagency approach to implementing infant and toddler services means that many service providers from multiple agencies will need to be trained in Part H procedural safeguards. These rights and safeguards may be different than current policy and experience of non-education agencies.

As states are developing training and technical assistance activities, care should be taken to involve many relevent stakeholders (such as families, multiple agency providers, advocates, parent groups, and community leaders) as collaborative planners and participants in training. The benefits of multiple perspectives in discussions include learning together, developing true partnerships, and understanding one another's experience and point of view.

Family-friendly approaches for explaining procedural safeguards need to be an integral part of these evolving practices. Because family-centered early intervention services are interagency, community-based efforts, service providers from a variety of disciplines and agencies, family members, and other community members will need to become comfortable with a working knowledge of procedural safeguards which can be applied in daily experience in the early intervention process.

Next Steps: A Call for Resources

States now are assuring full implementation of Part H of IDEA, and are developing procedures and materials related to procedural safeguards. The reference list does not capture the wealth of materials that are evolving or that have become available during the process of writing this paper. A next step for NEC•TAS is to collect and disseminate descriptions of current resources. Readers of this paper are invited to contact Joicey Hurth at NEC•TAS or send her materials that are available for dissemination .

References

Fortune, L. B., Dietrich, S., Blough, J., & Hartman, A. (1993). *Early On: Michigan's family guidebook for early intervention services.* Lansing: Michigan Department of Education.

Garland, C. (Ed.). (1992). *A guide to early intervention.* Lightfoot, VA: Williamsburg Area Child Development Resources, Inc.

Gilmer, V. (1992). *A parent handbook: The New Mexico Family Infant Toddler Program.* Santa Fe: New Mexico Department of Health.

Haai'i Department of Health. (1991). *Once upon a time . . .* Honolulu: Zereo-to-Three Hawai'i Project.

Hawaii Department of Health. (n.d.). *dear family, on behalf of infants and toddlers with special needs* (brochure). Honolulu: Zero-to-Three Hawaii Project.

The Individuals with Disabilities Education Act, P.L. No. 101-476, 104 Stat. 1103 (1990) (codified as amended at 20 U.S.C. Secs. 1400-1485).

Herlinger, M. (Producer). (1993). *Staying in charge: Information for families and service providers about family rights* [Video]. Denver: Colorado Department of Education.

Maryland Infants and Toddlers Program, Governor's Office for Children, Youth, and Families. (1992a). *Dreams & challenges. A family's guide to the Maryland Infants & Toddlers Program* (brochure). Baltimore: Author.

Maryland Infants and Toddlers Program, Governor's Office for Children, Youth, and Families. (1992b). *Impartial procedures for resolving individual child complaints* (brochure). Baltimore: Author.

Maryland Infants and Toddlers Program, Governor's Office for Children, Youth, and Families. (1992c). *Mediation in the early intervention system* (brochure). Baltimore: Author.

Maryland Infants and Toddlers Program, Governor's Office for Children, Youth, and Families. (1992d). *Parents' rights in the early intervention system* (brochure). Baltimore: Author.

NEC•TAS. (1992, August). [State procedures for resolving individual child complaints]. Unpublished raw data.

Project Vision, University of Idaho. (1992a). *Parent satisfaction ratings* (booklet series). Moscow, ID: Author.

Project Vision, University of Idaho. (1992b). *Parents as partners* (booklet series). Moscow, ID: Author.

The Texas Early Childhood Intervention Program. (1991). *Setting your course in ECI: A rights handbook for families with children in the Texas Early Childhood Intervention Program.* Austin; Author.

U.S. Department of Education. (1993, July 30). 34 CFR Part 303. Early Intervention Program for Infants and Toddlers With Disabilities; Final rule. *Federal Register*, *58*(145), 40958-40989.

U.S. Department of Education. (1992, September 29). 34 CFR Parts 300 and 301. Assistance to States for the Education of Children with Disabilities Program and Preschool Grants for Children with Disabilities; Final rule. *Federal Register*, *57*(189), 44794-44852.

Appendix: IDEA Regulations Relating to Procedural Safeguards

Text of regulations providing for procedural safeguards under the Early Intervention Program for Infants and Toddlers With Disabilities (Part H)[1] and the Preschool Grants Program (Section 619 of Part B)[2] of the Individuals With Disabilities Education Act (IDEA)

PART H REGULATIONS (1993)

SUBPART E—PROCEDURAL SAFEGUARDS

General

Sec. 303.400 General responsibilities of lead agency for procedural safeguards

Each lead agency shall be responsible for—

(a) Establishing or adopting procedural safeguards that meet the requirements of this subpart; and

(b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.

(Authority: 20 U.S.C. 1480)

Sec. 303.401 Definitions of consent, native language, and personally identifiable information

As used in this subpart—

(a) Consent means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;

(b) Native language; where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;

(c) Personally identifiable means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's or parent's social security number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1480)

Sec. 303.402 Opportunity to examine records

In accordance with the confidentiality procedures in the regulations under Part B of the Act (34 CFR 300.560 through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child,

---

[1] U.S. Department of Education, 1993, pp. 40975-40977.

[2] U.S. Department of Education, 1992, pp. 44819-44822.

and any other area under this part involving records about the child and the child's family.

(Authority: 20 U.S.C. 1480(4))

Sec. 303.403 Prior notice; native language

(a) General

Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) Content of notice

The notice must be in sufficient detail to inform the parents about—

(1) The action that is being proposed or refused;

(2) The reasons for taking the action; and

(3) All procedural safeguards that are available under this part.

(c) Native language

(1) The notice must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that—

(i) the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(ii) The parent understands the notice; and

(iii) There is written evidence that the requirements of this paragraph have been met.

(3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

(Authority: 20 U.S.C. 1480(6) and (7))

Sec. 303.404 Parent consent

(a) Written parental consent must be obtained before—

(1) Conducting the initial evaluation and assessment of a child under Sec. 303.322; and

(2) Initiating the provision of early intervention services (see Sec. 303.342(e)).

(b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent—

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(Authority: 20 U.S.C. 1480)

Note 1: In addition to the consent requirements in this section, other consent requirements are included in (1) Sec. 303.460(a), regarding the exchange of personally identifiable information among agencies, and (2) the confidentiality provisions in the regulations under Part B of the Act (34 CFR 300.571) and 34 CFR part 99 (Family Educational Rights and Privacy), both of which apply to this part.

Note 2: Under Sec. 300.504(b) of the Part B regulations, a public agency may initiate procedures to challenge a parent's refusal to consent to the initial evaluation of the parent's child and, if successful, obtain the evaluation. This provision applies to eligible children under this part, since the Part B evaluation requirement applies to all children with disabilities in a State, including infants and toddlers.

Sec. 303.405 Parent right to decline service

The parents o f a child eligible under this part may determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with State law, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part.

(Authority: 20 U.S.C. 1480(3))

Sec. 303.406 Surrogate parents

(a) General

Each lead agency shall ensure that the rights of children eligible under this part are protected if—

(1) No parent (as defined in Sec. 303.18) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) Duty of lead agency and other public agencies

The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for—

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

(c) Criteria for selecting surrogates

(1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate parent—

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) Non-employee requirement; compensation

(1) A person assigned as a surrogate parent may not be an employee of any agency involved in the provision of early intervention or other services to the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

(e) Responsibilities

A surrogate parent may represent a child in all matters related to—

(1) The evaluation and assessment of the child;

(2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(3) The ongoing provision of early intervention services to the child; and

(4) Any other rights established under this part.

(Authority: 20 U.S.C. 1480(5))

Impartial Procedures for Resolving Individual Child Complaints

Sec. 303.420 Administrative resolution of individual child complaints by an impartial decision-maker

Each system must include written procedures for the timely administrative resolution of individual child complaints by parents concerning any of the matters in Sec. 303.403(a). A State may meet this requirement by—

(a) Adopting the due process procedures in 34 CFR 300.506 through 300.512 and developing procedures that meet the requirements of Sec. 303.425; or

(b) Developing procedures that—

(1) Meet the requirements in Secs. 303.421 through 303.425; and

(2) Provide parents a means of filing a complaint.

(Approved by the Office of Management and Budget under control number 1820-05500

(Authority: 20 U.S.C. 1480(1))

Note 1: Secs. 303.420 through 303.425 are concerned with the adoption of impartial procedures for resolving individual child complaints (i.e. complaints that generally affect only a single child or the child's family). These procedures require the appointment of a decision-maker who is impartial, as defined in Sec. 303.421(b), to resolve a dispute concerning any of the matters in Sec. 303.403(a). The decision of the impartial decision-maker is binding unless it is reversed on appeal.

A different type of administrative procedure is included in Secs. 303.510 through 303.512 of subpart F of this part. Under those procedures, the lead agency is responsible for (1) investigating any complaint that it receives (including individual child complaints and those that are systemic in nature), and (2) resolving the complaint if the agency determines that a violation has occurred.

Note 2: It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant's or toddler's development is so rapid that undue delay could be potentially harmful.

In an effort to facilitate resolution, States may wish, with parental concurrence, to offer mediation as an intervening step prior to implementing the procedures in this section.

Part H Regulations, *continued*

Although mediation is not required under either Part B or Part H of the Act, some States have reported that mediations conducted under Part B have led to speedy resolution of differences between parents and agencies, without the development of an adversarial relationship and with minimal emotional stress to parents.

While a State may elect to adopt a mediation process, the State cannot require that parents use that process. Mediation may not be used to deny or delay a parent's rights under this part. The complaint must be resolved, and a written decision made, within the 30-day timeline in Sec. 303.423.

Sec. 303.421 Appointment of an impartial person

(a) Qualifications and duties

An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must—

(1) Have knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and

(2) Perform the following duties:

(i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) Definition of impartial

(1) As used in this section, impartial means that the person appointed to implement the complaint resolution process—

(i) Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1480(1))

Sec. 303.422 Parent rights in administrative proceedings

(a) General

Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under Sec. 303.420

(b) Rights

Any parent involved in an administrative proceeding has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

93) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;

(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1480)

Sec. 303.423 Convenience of proceedings; timelines

(a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency shall ensure that, not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1480(1))

Part H Regulations, *continued*

Note: Under Part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (i.e. within 45 days after the receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (See 34 CFR 300.512.) Thus, if a State, in meeting the requirements of Sec. 303.420, elects to adopt the due process procedures under Part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeline for the due process hearing for children who are eligible under this part—from 45 days to the 30-day timeline in this section. Because the needs of children in the birth-through-two-age range change so rapidly, quick resolution of complaints is important.

Sec. 303.424 Civil action

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under Sec. 680(1) of the Act.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1480(7))

Sec. 303.425 Status of a child during proceedings.

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

(Approved by the Office of Management and Budget under control number 1820-0550)
Authority: 20 U.S.C. 1480(7))

Confidentiality

Sec. 303.460 Confidentiality of information

(a) Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law.

(b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the modifications specified in Sec. 303.5(b).

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1480(2), 1483)
Note: With the modifications referred to in paragraph (b) of this section, the confidentiality requirements in the regulations implementing Part B of the Act (34 CFR 300.560 through 300.576) are to be used by public agencies to meet the confidentiality requirements under Part H of the Act and this section (Sec. 303.460).

The Part B provisions incorporate by reference the regulations in 34 CFR Part 99 (Family Educational Rights and Privacy); therefore, those regulations also apply to this part.

PART B REGULATIONS (1992)

SUBPART E—PROCEDURAL SAFEGUARDS

Due Process Procedures for Parents and Children

Sec. 300.500 Definitions of "consent," "evaluation," and "personally identifiable"

(a) As used in this part: "Consent" means that—

(1) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(b) "Evaluation" means procedures used in accordance with Secs. 300.530-300.534 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

(c) "Personally identifiable" means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's social security number or student number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415, 1417(c))

Sec. 300.501 General responsibility of public agencies

Each SEA shall ensure that each public agency established and implements procedural safeguards that meet the requirements of Secs. 300.500-300.515.

(Authority: 20 U.S.C. 1415(a))

Sec. 300.502 Opportunity to examine records

The parents of a child with a disability shall be afforded, in accordance with the procedures of Secs. 300.562-300569, an opportunity to inspect and review all education records with respect to—

(a) The identification, evaluation, and educational placement of the child; and

(b) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(A))

Sec. 300.503 Independent educational evaluation

(a) General

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with Sec. 300.301.

(b) Parent right to evaluation at public expense

A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may

initiate a hearing under Sec. 300.506 to show that its evaluation is appropriate.

If the final decision is that the evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense.

(c) Parent initiated evaluations

If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the public agency in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) Requests for evaluations by hearing officers

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) Agency criteria

Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(Authority: 20 U.S.C. 1415(b)(1)(A))

Sec. 300.504 Prior notice; parent consent

(a) Notice

Written notice that meets the requirements of Sec. 300.505 must be given to the parents of a child with a disability a reasonable time before the public agency—

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) Consent; procedures if a parent refuses consent

(1) Parental consent must be obtained before—

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a child with a disability in a program providing special education and related services.

(2) If State law requires parental consent before a child with a disability is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(3) If there is no State law requiring consent before a child with a disability is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in Secs. 300.506-300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent. If it does so and the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under Secs. 300.510-300.513.

(c) Additional State consent requirements

In addition to the parental consent requirements described in paragraph (b) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(d) Limitation

A public agency may not require parental consent as a condition of any benefit to the parent or the child except for the service or activity for which consent is required under paragraphs (b) or (c) of this section.

(Authority: 20 U.S.C. 1415(b)(1)(C), (D); 1412(2), (6))

Note 1: Any changes in a child's special education program after the initial placement are not subject to the parental consent requirements in paragraph (b)(1) of this section, but are subject to the prior notice requirement in paragraph (a) of this section and the IEP requirements of Secs. 300.340-300.350.

Note 2: Paragraph (b)(2) of this section means that if State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and

related services, must be followed.

If, however, there is no legal requirements for consent outside of these regulations, the public agency may use the due process procedures of Secs. 300.506-300.508 to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

Note 3: If a State adopts a consent requirement in addition to those described in paragraph (b) of this section and consent is refused, paragraph (d) of this section requires that the public agency must nevertheless provide the services and activities that are not in dispute. For example, if a State requires parental consent to the provision of all services identified in an IEP and the parent refuses to consent to physical therapy services included in the IEP, the agency is not relieved of its obligation to implement those portions of the IEP to which the parent consents.

If the parent refuses to consent and the public agency determines that the service or activity in dispute is necessary to provide FAPE to the child, paragraph (c) of this section requires that the agency must implement its procedures to override the refusal.

This section does not preclude the agency from reconsidering its proposal if it believes that circumstances warrant.

Sec. 300.505 Content of notice

(a) The notice under Sec. 300.504 must include—

(1) A full explanation of all of the procedural safeguards available to the parents under Sec. 300.500, Secs. 300.502-300.515, and Secs. 300.562-300.569;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors that are relevant to the agency's proposal or refusal.

(b) The notice must be—

(1) Written in language understandable to the general public; and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the SEA or LEA shall take steps to ensure—

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice; and

(3) That there is written evidence that the requirements in paragraphs (c)(1) and (2) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(1)(D))

Sec. 300.506 Impartial due process hearing

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in Sec. 300.504(a)(1) and (2).

(b) The hearing must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation , or a written policy of the SEA.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if—

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(Authority: 20 U.S.C. 1415(b)(2))

Note: Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of children with disabilities, and the provision of FAPE to those children. Mediations have been conducted by members of SEAs or LEA personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under Secs. 300.500-300.515.

Sec. 300.507 Impartial hearing officer

(a) A hearing may not be conducted—

(1) By a person who is an employee of a public agency that is involved in the education or care of the child; or

(2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(Authority: 20 U.S.C. 1414(b)(2))

Sec. 300.508 Hearing rights

(a) Any party to a hearing has the right to

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses.

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing.

(4) Obtain a written or electronic verbatim record of the hearing.

(5) Obtain written findings of fact and decisions. The public agency, after deleting any personally identifiable information, shall—

(i) Transmit those findings and decisions to the State advisory panel established under Sec. 300.650; and

(ii) Make those findings and decisions available to the public.

(b) Parents involved in hearings must be given the right to—

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(Authority: 20 U.S.C. 1415(d))

Sec. 300.509 Hearing decision; appeal

A decision made in a hearing conducted under Sec. 300.506 is final, unless a party to the hearing appeals the decision under Sec. 300.510 or Sec. 300.511.

(Authority: 20 U.S.C. 1415(c))

Sec. 300.510 Administrative appeal; impartial review

(a) If the hearing is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(b) If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record.

(2) Ensure that the procedures at the hearing were consistent with the requirements of due process.

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 300.508 apply.

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official.

(5) Make an independent decision on completion of the review.

(6) Give a copy of written findings and the decision to the parties.

(c) The SEA, after deleting any personally identifiable information shall—

(1) Transmit the findings and decisions referred to in paragraph (b)(6) of this section to the State advisory panel established under Sec. 300.650; and

(2) Make those findings and decisions available to the public.

(d) The decision made by the reviewing official is final unless a party brings a civil action under Sec. 300.511.

(Authority: 20 U.S.C. 1415(c), (d); H.R. Rep. No. 94-664, at p. 49 (1975))

Note 1: The SEA may conduct its review either directly or through another State agency acting on its behalf. However, the

SEA remains responsible for the final decision on review.
Note 2: All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in Sec. 300.508 relating to hearings also apply.

Sec. 300.511 Civil action

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under Sec. 300.510, and any party aggrieved by the decision of a reviewing officer under Sec. 300.510, has the right to bring a civil action under section 615(e)(2) of the Act.

(Authority: 20 U.S.C. 1415)

Sec. 300.512 Timelines and convenience of hearings and reviews

(a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review—

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415)

Sec. 300.513 Child's status during proceedings

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(Authority: 20 U.S.C. 1415(e)(3))
Note: Section 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

Sec. 300.514 Surrogate parents

(a) General

Each public agency shall ensure that the rights of a child are protected when—

(1) No parent (as defined in Sec. 300.13) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) Duty of public agency

The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method: (1) For determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) Criteria for selection of surrogates

(1) The public agency may select a surrogate parent in any way permitted under State Law.

(2) Public agencies shall ensure that a person selected as a surrogate—

(i) Has no interest that conflicts with the interest of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) Non-employee requirement; compensation

(1) A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraphs (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) Responsibilities

The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(B))

Sec. 300.515 Attorneys' fees

Each public agency shall inform parents that in any action or proceeding under section 615 of the Act, courts may award parents reasonable attorneys' fees under the circumstances described in section 615(e)(4) of the Act.

(Authority: 20 U.S.C. 1415(b)(1)(D); 1415(e)(4))

Protection in Evaluation Procedures

Sec. 300.530 General

(a) Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of Secs. 300.530-300.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of children with disabilities must be selected and administered so as not to be racially or culturally discriminatory.

(Authority: 20 U.S.C. 1412(5)(C))

Sec. 300.531 Preplacement evaluation

Before any action is taken with respect to the initial placement of a child with a disability in a program providing special education and related services, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of Sec. 300.532.

(Authority 20 U.S.C. 1412(5)(C))

Sec. 300.532 Evaluation procedures

State educational agencies and LEAs shall ensure, at a minimum, that:

(a) Tests and other evaluation materials—

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer.

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(Authority: 20 U.S.C. 1412(5)(C))

Note: Children who have a speech or language impairment as their primary disability may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior) However, a qualified speech-language pathologist would: (1) Evaluate each child with a speech or language impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments, and (2) if necessary, make

Part B Regulations, *continued*

referrals for additional assessments needed to make an appropriate placement decision.

Sec. 300.533 Placement procedures

(a) In interpreting evaluation data and in making placement decisions, each public agency shall—

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Ensure that information obtained from all of these sources is documented and carefully considered;

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Ensure that the placement decision is made in conformity with the LRE rules in Secs. 300.550-300.554.

(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Secs. 300.340-300.350.

(Authority: 20 U.S.C. 1412(5)(C); 1414(a)(5))

Note: Paragraph (a)(1) of this section includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to ensure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other children with disabilities, such as a child who has a severe articulation impairment as his primary disability. For such a child, the speech-language pathologist, in complying with the multiple source requirement, might use: (1) A standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

Sec. 300.534 Reevaluation

Each SEA and LEA shall ensure—

(a) That the IEP of each child with a disability is reviewed in accordance with Secs. 300.340-300.350; and

(b) That the evaluation of the child, based on procedures that meet the requirements of Sec. 300.532, is conducted every three years, or more frequently if conditions warrant, or if the child's parent or teacher requests an evaluation.

(Authority: 20 U.S.C. 1412(5)(c))

The following section from 34 CFR Part 303, Regulations for Part H of IDEA, also applies:

Sec. 303.425 Status of a child during proceedings.

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

(Approved by the Office of Management and Budget under control number 1820-0550)

Authority: 20 U.S.C. 1480(7))

National Early Childhood Technical Assistance System
a program of the Frank Porter Graham Child Development Center at the University of North Carolina at Chapel Hill
500 NationsBank Plaza, 137 E. Franklin Street
Chapel Hill, NC 27514
(919) 962-2001 • Fax: (919) 966-7463
Internet: nectasta.nectas@mhs.unc.edu
World Wide Web: http://www.nectas.unc.edu